

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CHENG-HUA H.,

Claimant,

vs.

REGIONAL CENTER OF THE EAST  
BAY,

Service Agency.

OAH No. 2011090460

**DECISION**

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on October 28, 2011, in San Leandro, California.

Mary Dugan, Fair Hearing and Mediation Specialist, represented Regional Center of the East Bay, the service agency.

Cheng-Hua H. (claimant) was represented by his father, Tapin H.

The matter was submitted for decision on October 28, 2011.

**ISSUE PRESENTED**

May Regional Center of the East Bay discontinue funding for H.A.T.C.H.<sup>1</sup> services from August 1, 2011 to July 31, 2012?

**FACTUAL FINDINGS**

1. Claimant is a 25-year-old consumer of the Regional Center of the East Bay (RCEB) who lives at home with his mother and father. He is eligible for regional center services based upon a diagnosis of autism, full spectrum.

---

<sup>1</sup> H.A.T.C.H. stands for Help Another Toward Creative Happiness.

2. Since May 7, 2009, claimant has attended the Friends of Children with Special Needs (FCSN) adult development program five days per week and is benefiting from this program. His favorite activities at FCSN are bowling, playing guitar, using the computer and singing the goodbye song at the end of each day. At FCSN, claimant participates in arts and crafts, reading, baking, dance and yoga, music (drumming), games, chores, story time and field trips. Vocational training is quite limited at present because of his need for one-on-one supervision. FCSN provides outings on Fridays.

3. Claimant is particularly attached to one member of the staff at FCSN and it is stressful for him when the staff member is away. Claimant's communication skills are limited. Generally, claimant is very friendly, however he needs verbal and gesture prompts to give personal space to others. Claimant exhibits three types of aggressive behaviors: attempted touching, hitting or grabbing, actual hitting and actual grabbing.

4. For the past four years, RCEB has provided funding for H.A.T.C.H. services at a volume of 40 hours per month. In the Notice of Proposed Action, RCEB proposes funding 40 hours of H.A.T.C.H. services per month through December 2011, reducing the purchase to 20 hours per month through March 2012, and reducing the purchase further to 10 hours per month through July 31, 2012, in order to allow for a transition from the services. Claimant's parents disagreed with the proposal and requested this hearing.

5. Claimant's H.A.T.C.H. service provider, Shelly Mack, testified at hearing. Mack has known claimant since he was a student at the high school where she worked. Mack took over as claimant's H.A.T.C.H. service provider approximately 18 months ago, following the death of his prior H.A.T.C.H. service provider. Mack takes claimant to Silliman Activity & Family Aquatic Center after his day program on Mondays, Tuesdays and Thursdays.

6. Mack testified that claimant regressed significantly following the passing of his prior H.A.T.C.H. service provider. Claimant needs prompting in order to control his aggressive behaviors. She considers herself to be a behavior and socialization tutor, rather than someone who takes the claimant to recreational activities. Over time, claimant has made progress in interacting with the general public, but needs to be constantly supervised in order to avoid potentially injurious or criminal behavior. In addition, claimant's attempts to touch others could lead to confusion and the potential of claimant being injured by others. FCSN is a very structured environment where claimant mainly interacts with teachers and other disabled individuals. Mack is able to help claimant learn to interact appropriately in a natural environment, with non-disabled people. In Mack's opinion, H.A.T.C.H. services are essential to claimant's continued progress. Past changes to claimant's schedule resulted in his hitting, inappropriately touching others, acting out, yelling, and not following rules. The gains Mack has made with claimant take a long time to attain, but can be set back quickly when changes in his routine occur.

7. Roxanne Muller, the administrative support specialist at Silliman Activity & Family Aquatic Center, submitted a letter on claimant's behalf. Muller finds claimant to be

very friendly and looks forward to seeing him at the facility. Muller confirms that following a change in schedule, claimant reverts to inappropriate behaviors. Muller believes that claimant's use of the facility has been "extremely helpful" to him.

8. Sharadha Raghavan, M.D., has been claimant's psychiatrist for 11 years. Dr. Raghavan submitted a letter dated August 15, 2011, in which he strongly recommends that claimant continue to receive supportive community-based social skills training with non-disabled peers through H.A.T.C.H. services. Dr. Raghavan believes that the H.A.T.C.H. services have "played a critical role in supporting [claimant] in his ability to function appropriately in community settings."

9. Claimant's father testified at hearing. Claimant's parents are very committed to their son and have sought to provide every possible benefit to him. They strongly believe that the H.A.T.C.H. services are critical to their son's progress. Claimant's parents believe that it is important for claimant to interact with non-disabled peers in the community, and H.A.T.C.H. services are his only opportunity to do so except when he is with his parents, who are not trained to teach him. Claimant's parents believe that H.A.T.C.H. services are critical to address his tendency to inappropriately approach or touch infants, children and females in the community, as well as to stem his self-injurious and aggressive behaviors. They feel the loss of H.A.T.C.H. services will put him at risk of being assaulted by others, or being accused of criminal behavior. H.A.T.C.H. services have successfully reduced his inappropriate behaviors and improved his social and communication skills. Claimant's parents fear that the reduction or removal of H.A.T.C.H. services will cause a regression in his behavior. They believe that the joint efforts of the adult day program and H.A.T.C.H. services have properly addressed claimant's behavior and needs. Claimant's parents hope that someday he will gain more independence, and they believe that the H.A.T.C.H. services are important to achieving that goal.

10. On November 2, 2009, after the enactment of new legislation that suspended regional center funding of "social recreation activities," RCEB approved the continuation of claimant's H.A.T.C.H. services following an informal appeal process in August 2010. On February 17, 2011, claimant's parents met with RCEB Associate Director of Case Management Services, John Rodriguez,<sup>2</sup> for another informal meeting to discuss claimant's H.A.T.C.H. services. Rodriguez wrote a letter to claimant's parents on February 17, 2011, in which he went into detail concerning claimant's condition and what the H.A.T.C.H. services provide to him. Rodriguez concluded that H.A.T.C.H. services "continue to be critical to address [claimant's] propensity to inappropriately touch females and young children in the community and to reduce his aggressive and self-injurious behaviors." Rodriguez authorized the continued funding of H.A.T.C.H. services at a volume of 40 hours per month for the period of February 1, 2011 to July 31, 2011. Rodriguez stated that he was "unable to approve the services for longer than six months since this is an exceptional request and RCEB must continue to regularly monitor [claimant's] progress."

---

<sup>2</sup> Mr. Rodriguez worked at RCEB for 25 years, but is no longer with the agency.

11. On September 7, 2011, RCEB provided claimant's parents with a notice of proposed action stating that it was unable by law to continue to fund H.A.T.C.H. services, citing the Lanterman Developmental Disabilities Services Act<sup>3</sup> (Lanterman Act) at section 4648.5, which prohibits funding of social recreation services except in extraordinary circumstances. In the notice, RCEB states that claimant "is attending an adult day program through FCSN which is the primary means of addressing his behaviors and social needs. He does not meet the criteria for an exception."

12. At hearing, Eva Chung, claimant's case manager for nine years, described claimant's condition and his progress over time. Chung did not give an opinion as to whether claimant was entitled to continue to receive H.A.T.C.H. services. Ella Higgins, an Associate Director for Consumer Services with RCEB, also testified at hearing. Higgins has worked with RCEB for 20 years and has held her current position since 2008. She knows John Rodriguez and worked with him for many years at RCEB. RCEB writes policies which are reviewed by its Board of Directors and the Department of Developmental Services to ensure compliance with the Lanterman Act.

13. Higgins has not met claimant and has not reviewed his file, however, in her opinion, this case does not fall under the exception to section 4648.5. In Higgins' opinion, claimant will make progress in his adult day program and recreation is not necessary to assure his progress. She believes that RCEB is out of compliance with the law by funding the service. Higgins agrees that nothing has changed with regard to claimant's progress, however, she believes that Rodriguez' decision to continue the funding for H.A.T.C.H. services since 2009 was wrong and against the law. While conceding that claimant has challenging behaviors, Higgins testified that his case does not rise to the level of an exception, in her opinion, because H.A.T.C.H. is a socialization program and those services are being provided by the adult day program. Claimant's request for funding was reviewed by the Exemption Committee of RCEB and was denied. Higgins is a member of the Exemption Committee, but does not remember whether she was there when this claim was reviewed. No evidence concerning the basis for the denial by the Exemption Committee was presented.

14. Mary Dugan, the Fair Hearing Specialist for RCEB, also testified at hearing. She is familiar with claimant's file. She agrees that claimant benefits from the H.A.T.C.H. services and that they are a very important part of his life. Dugan considers claimant's day program to be the primary means to ameliorate the effects of his developmental disability. She believes that the law requires RCEB to cut the funding for H.A.T.C.H. services in this case. Dugan did not explain why the services are not "critical" to ameliorating the effects of claimant's developmental disability.

---

<sup>3</sup> The Lanterman Developmental Disabilities Services Act governs this case and may be found at Welfare and Institutions Code section 4500 et seq. All further statutory citations are to the Welfare and Institutions Code.

## LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act provides that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (§ 4501.) Regional centers are required to carry out the state’s responsibility to the developmentally disabled. (§ 4501.) An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700–4716.) Claimant requested a fair hearing to appeal RCEB’s proposed termination of funding his H.A.T.C.H. services. (Factual Finding 4.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. A regional center seeking to terminate ongoing funding provided to a consumer has the burden of demonstrating its decision is correct. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9 [party asserting a claim or making charges generally has the burden of proof in administrative hearings].) In this case, RCEB bears the burden of proof, because it seeks to terminate funding it currently provides for claimant’s H.A.T.C.H. services. (Factual Findings 10 and 11.)

3. In the Budget Act of 2009, the Legislature made significant changes regarding the provision of services under the Lanterman Act. With respect to social recreation and non-medical therapies, section 4648.5 was added to provide, in relevant part, as follows:

(a) Notwithstanding any other provision of law or regulations to the contrary, retroactive to July 1, 2009, a regional centers’ [*sic*] authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

[¶]

(2) Social recreation activities, except those activities vendored as community day programs.

[¶]

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

[¶]

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the

consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

4. H.A.T.C.H. services are social recreation activities and are, therefore, subject to the provisions of section 4648.5. This amendment to the Lanterman Act does not allow RCEB to fund social recreation activities unless there are grounds for an exemption.

5. In order for the exemption to apply, either the services must be necessary to enable claimant to remain in his home, or the service must be a "primary or critical" means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability. There is no evidence that claimant will be unable to remain in his home if funding for the H.A.T.C.H. services is suspended.

6. John Rodriguez, a 25-year veteran of RCEB, found that the H.A.T.C.H. services provided to claimant, fall under the exemption identified in section 4648.5, subdivision (c), when he stated that the services were "critical to address [claimant's] propensity to inappropriately touch females and young children in the community and to reduce his aggressive and self-injurious behaviors." He made this conclusion after a detailed review of claimant's condition and how the H.A.T.C.H. services impacted his disability. (Factual Finding 10.)

7. RCEB provided evidence at hearing that it considers FCSN the "primary" means for ameliorating the physical, cognitive and psychosocial effects of claimant's disability, but failed to provide evidence to contradict Rodriguez' finding that the H.A.T.C.H. services were a "critical" means. (Factual Findings 11 to 14.) RCEB concedes that claimant's condition is challenging and has not changed significantly since Rodriguez's decision in February. (Factual Finding 13.) The family, on the other hand, provided testimony regarding the reasons the H.A.T.C.H. services were "critical" to ameliorating the effects of claimant's disability, as well as a letter from claimant's psychiatrist confirming the critical role the services have playing in claimant's ability to function appropriately in community settings. (Factual Findings 5 through 9.) Consequently, RCEB has failed to meet its burden of proof of establishing cause to suspend the provision of H.A.T.C.H. services.

## ORDER

The appeal of claimant Cheng-Hua H. is GRANTED.

DATED: \_\_\_\_\_

---

JILL SCHLICHTMANN  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.